

(26,301)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 834.

ROBERT L. COLEMAN, AS ADMINISTRATOR, AND LOUISE
L. COLEMAN, AS ADMINISTRATRIX, OF THE ESTATE
OF WALTER H. COLEMAN, DECEASED, APPELLANTS,

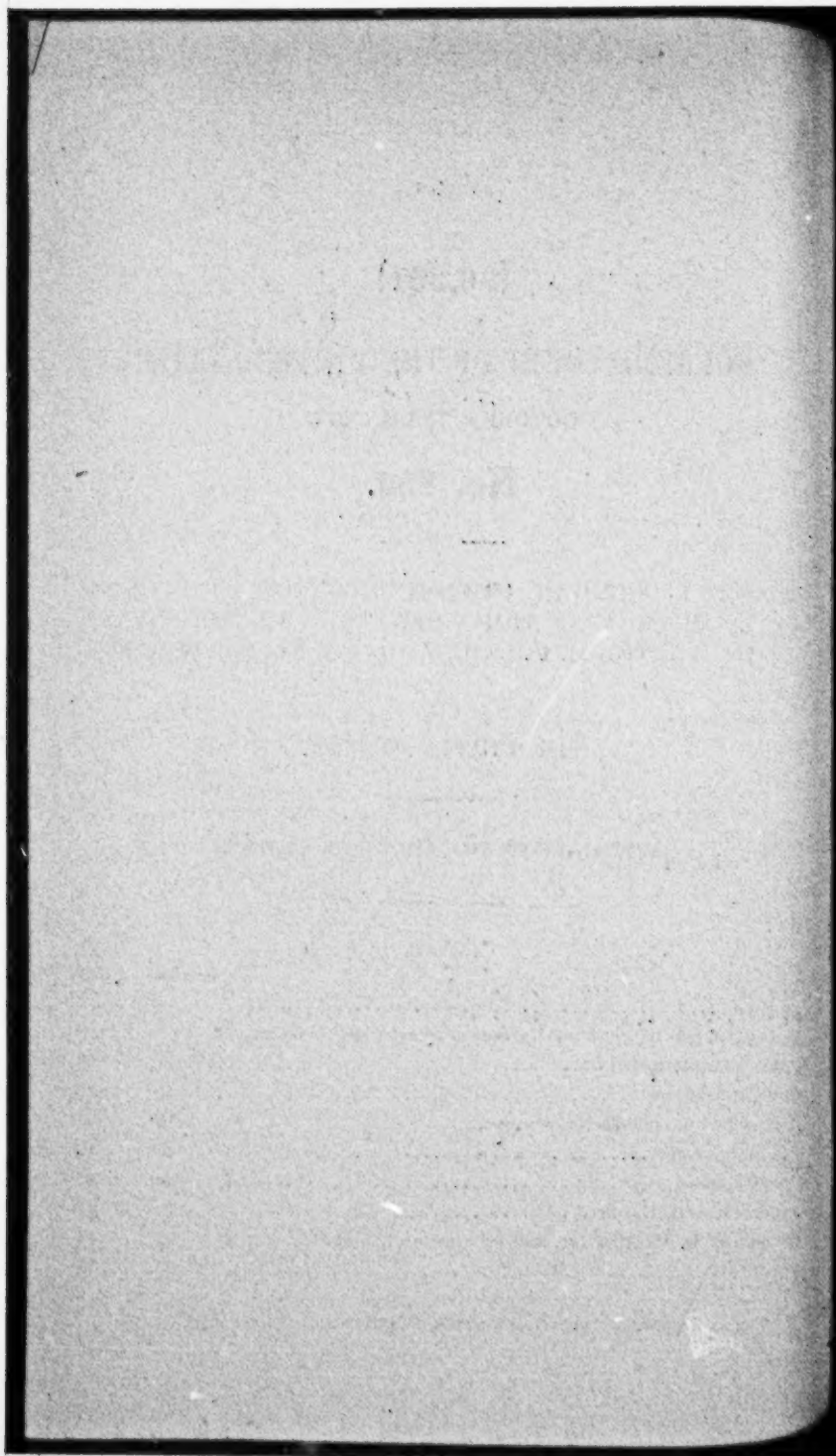
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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I. *Petition. Filed March 9, 1916.*

In the Court of Claims of the United States.

No. 33208.

ROBERT L. COLEMAN, as Administrator, and LOUISE L. COLEMAN,
as Administratrix, of the Estate of Walter H. Coleman, Deceased,

VS.

THE UNITED STATES.

*Petition.*To the Honorable the Chief Justice and the Judges of the Court of
Claims:Petitioners, Robert L. Coleman and Louise L. Coleman, as ad-
ministrator and administratrix of the estate of Walter H. Coleman,
deceased, respectfully represent:

I.

That on June 13, 1898, the President of the United States approved
an act entitled "An act to provide ways and means to meet war
expenditures and for other purposes" (30 Stat., 448, 464-5),
by section 29 of which legacies and distributive shares arising
from personal property become subject to a tax. Portions of
said section 29 material to this case are as follows:

"Section 29. That any person or persons having in charge or trust,
as administrators, executors, or trustees, any legacies or distributive
shares arising from personal property, where the whole amount of
such personal property as aforesaid which shall exceed the sum of
ten thousand dollars in actual value, passing, after the passage of this
Act, from any person possessed of such property, either by will or by
the intestate laws of any State or Territory, or any personal property
or interest therein, transferred by deed, grant, bargain, sale, or gift,
made or intended to take effect in possession or enjoyment after the
death of the grantor or bargainer, to any person or persons, or to
any body or bodies, politic or corporate, in trust or otherwise, shall
be, and hereby are, made subject to a duty or tax, to be paid to the
United States as follows—that is to say:

"Where the whole amount of said personal property shall exceed
in value ten thousand and shall not exceed in value the sum of
twenty-five thousand dollars the tax shall be:

"First. Where the person or persons entitled to any beneficial
interest in such property shall be the lineal issue or lineal ancestor,
brother, or sister to the person who died possessed of such property,
as aforesaid, at the rate of seventy-five cents for each and every hun-
dred dollars of the clear value of such interest in such property.

"* * * where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; * * *

II.

That on June 27, 1902, the President of the United States approved an act entitled "An act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes" (32 Stat., 406), of which Section 3 is material in this case and reads as follows:

"That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the Act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

III.

That on April 12, 1902, the President of the United States approved an act entitled "An act to repeal war revenue taxation, and for other purposes" (32 Stat., 96), by which said Section 29 of the said act of June 13, 1898, was repealed, said repeal to take effect on July 1, 1902. Portions of said act of April 12, 1902, material to this case are as follows:

"Section 7. That section * * * twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and all amendments * * * be, and the same are hereby, repealed.

4 "Section 8. That all taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this Act, shall be subject, as to lien, charge, collection, and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows: * * *

* * * * *

"Section 11. That this Act, except as otherwise specifically provided in the preceding section, shall take effect July first, nineteen hundred and two."

IV.

That on July 27, 1912, the President of the United States approved an act entitled "An act extending the time for the repayment of certain war-revenue taxes erroneously collected" (37 Stat., 240), the whole of which is as follows:

"That all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under the provisions of section twenty-nine of the act of Congress approved June thirteenth, eighteen hundred and ninety-eight, known as the war-revenue tax, or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act may be presented to the Commissioner of Internal Revenue on or before the first day of January, nineteen hundred and fourteen, and not thereafter.

"Sec. 2. That the Secretary of the Treasury is hereby authorized and directed to pay, out of any moneys of the United States not otherwise appropriated, to such claimants as have presented or shall hereafter so present their claims, and shall establish such erroneous or illegal assessment and collection, any sums paid by them or on their account or in their interest to the United States under the provisions of the Act aforesaid."

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V.

That on June 1, 1902, Walter H. Coleman, a citizen of the United States and of the State of New York, and a resident of the Borough of Brooklyn, in the City of New York and in the County of Kings in said State, departed this life, leaving no last will and testament, and that the Petitioners were duly appointed administrator and administratrix of the estate of the said decedent, by letters of administration issued on June 9, 1902, by the Surrogate's Court of Kings County in said State, a court of competent jurisdiction, and qualified as such administrator and administratrix, and proceeded to act, and now act, in that capacity; all of which will more fully appear by reference to a certified copy of the letters of administration, attached hereto, which is prayed to be read and considered as a part of this Petition.

VI.

Sections 1819, 2718 (so far as material in this case), 2721, 2722, and 2723 of the Code of Civil Procedure of the State of New York, in force at the time of the decease of the said Walter H. Coleman and continuously thereafter until July 1, 1902, and for some years thereafter, are as follows:

"Section 1819. If, after the expiration of one year from the granting of letters testamentary or letters of administration, an executor

or administrator refuses, upon demand, to pay a legacy, or distributive share, the person entitled thereto may maintain such an action against him, as the case requires. But for the purpose of computing the time, within which such an action must be commenced, the cause of action is deemed to accrue, when the executor's or administrator's account is judicially settled, and not before."

6 "Section 2718. The executor or administrator at any time after the granting of his letters, may insert a notice, once in each week for six months in such newspaper or newspapers printed in the county as the surrogate directs, requiring all persons having claims against the deceased to exhibit the same, with the vouchers therefor, to him, at a place to be specified in the notice, at or before a day therein named, which must be at least six months from the day of the first publication of the notice. * * * If a suit be brought on a claim which is not presented to the executor or administrator within six months from the first publication of such notice, the executor or administrator shall not be chargeable for any assets or moneys that he may have paid in satisfaction of any lawful claims, or of any legacies, or in making distribution to the next of kin before such suit was commenced."

"Section 2721. No legacy shall be paid by any executor or administrator until after the expiration of one year from the time of granting letters testamentary or of administration, unless directed by the will to be sooner paid. If directed to be sooner paid, the executor or administrator may require a bond, with two sufficient sureties, conditioned, that if debts against the deceased duly appear, and there are not assets to pay the same, and no other assets sufficient to pay other legacies, then the legatees will refund the legacy so paid, or such ratable portion thereof with the other legatees, as may be necessary for the payment of such debts, and the proportional parts of such other legacies, if there be any, and the costs and charges incurred by reason of the payment to such legatee, and that if the probate of the will, under which such legacy is paid, be revoked, or the will declared void, that such legatee will refund the whole of such legacy, with interest, to the executor or administrator entitled thereto. After the expiration of one year, the executors or administrators must discharge the specific legacies bequeathed by the will and pay the general legacies, if there be assets. If there are not sufficient assets, then an abatement of the general legacies must be made in equal proportions. Such payment shall be enforced by the surrogate in the same manner as the return of an inventory, and by a
7 suit on the bond of such executor or administrator whenever directed by the surrogate."

"Section 2722. In either of the following cases a petition may be presented to the surrogate's court, praying for a decree, directing an executor or administrator to pay the petitioner's claim, and that he be cited to show cause why such a decree should not be made:

"1. By a creditor, for the payment of a debt, or of its just proportional part, at any time after six months have expired since letters were granted.

"2. By a person entitled to a legacy, or any other pecuniary provision under the will, or a distributive share, for the payment or

satisfaction thereof, or of its just proportional part, at any time after one year has expired since letters were granted.

"On the presentation of such a petition, the surrogate must issue a citation accordingly; and on the return thereof, he must make such a decree in the premises as justice requires. But in either of the following cases the decree must dismiss the petition without prejudice to an action or an accounting, in behalf of the petitioner:

"1. When an executor or administrator files a written answer, duly verified, setting forth facts which show that it is doubtful whether the petitioner's claim is valid and legal, and denying its validity and legality, absolutely, or on information and belief.

"2. Where it is not proved, to the satisfaction of the surrogate, that there is money or other personal property of the estate, applicable to the payment or satisfaction of the petitioner's claim and which may be so applied, without injuriously affecting the rights of others, entitled to priority or equality of payment or satisfaction."

"Section 2723. In a case specified in subdivision second of the last section, the surrogate may in his discretion, entertain the petition at any time after letters are granted, although a year has not expired. In such a case, if it appears, on the return of the citation, that a decree for payment may be made, as prescribed in the last section; and that the amount of money and the value of the other property

in the hands of the executor or administrator applicable to the payment of debts, legacies and expenses, exceed, by at least one-third, the amount of all known debts and claims against the estate, of all legacies which are entitled to priority over the petitioner's claim and of all legacies and distributive shares of the same class; and that the payment or satisfaction of the legacy, pecuniary provision or distributive share, or some part thereof, is necessary for the support or education of the petitioner; the surrogate may, in his discretion, make a decree directing payment or satisfaction accordingly, on the filing of a bond, approved by the surrogate, conditioned as prescribed by law, with respect to a bond which an executor or an administrator with the will annexed may require from a legatee, on payment or satisfaction of a legacy, before the expiration of one year from the time when letters were issued, pursuant to a direction to that effect contained in the will."

That the estate of the said Walter H. Coleman, deceased, was, and has been, and is being, administered in all respects subject to and in accordance with the aforesaid Sections.

VII.

That a notice requiring all persons having claims against the estate of the said Walter H. Coleman, deceased, to exhibit the same to the administrator and administratrix, or one of them, in accordance with the law in that case made and provided, was first published in the Brooklyn Daily Times, a newspaper published in the Borough of Brooklyn, in the City of New York, and County of Kings, in the State of New York, on June 19, 1902, and was thereafter published once a week for six months, commencing with said

June 19, 1902; that the time within which persons having claims against said estate were permitted to file their said claims expired on December 20, 1902, and not before said date; that the amount of debts and claims against the said estate had not been determined, and could not have been determined, on or before July 1, 1902; that the rights of the next of kin and the value of their respective interests in said estate, were not determined or ascertained, and could not have been determined or ascertained, on or before July 1, 1902.

VIII.

That the said Walter H. Coleman, deceased, left him surviving, as his only next of kin, his daughter, Louise L. Coleman, one of the Petitioners, and his sons, Robert L. Coleman and Walter Coleman, the said Robert L. Coleman being one of Petitioners; that on June 12, 1902 the aggregate sum of Fifteen Hundred Dollars (\$1,500.00) was paid in equal shares of Five Hundred Dollars (\$500.00) each, out of the funds of the estate of the said decedent, to his said next of kin; that on June 25, 1902, an additional sum of Five Hundred Dollars (\$500.00), out of the funds of the said estate, was paid to the said Robert L. Coleman; that the aforesaid payments, aggregating Two Thousand Dollars (\$2,000.00) in all, were advances to said next of kin on account of their supposed interests in the estate of the said decedent; that on account of and to the extent of the advances aforesaid the Petitioners, as administrator and administratrix, became personally liable for claims against the estate in excess of the assets thereof which might be presented prior to December 20, 1902, and said next of kin were, on July 1, 1902, and thereafter, at least until the time for the presenting of claims against said estate had expired, liable to be required, in accordance with the laws of the State of New York, to refund the full amount of said advances, in order to provide funds for the payment of claims against said estate; that neither on nor before July 1, 1902, were any other or additional payments, out of the funds of the said estate, made to or for the account of, the said next of kin or any of them, nor prior to July 1, 1902, did any other or additional benefit, beyond the payments hereinbefore expressly stated, accrue out of said estate to or for the use of all or any of said next of kin; that neither on nor before July 1, 1902, was any order entered or requirement made, by any court or officer of probate or by any other court, authorizing or directing the payment of any further or additional sum to or for the benefit of the said next of kin or either of them nor did said next of kin, or either of them, claim or demand or become entitled to claim or to demand or to receive any further or additional payment or benefit out of said estate.

IX.

That on or about May 29, 1903, the Petitioners paid to the United States Collector of Internal Revenue, for the First District of New

York, the sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), which the said Collector had previously demanded and claimed and did there and then demand and claim to be due to the United States, under the provisions of the said Act of June 13, 1898, and amendments, as a tax upon or in respect of distributive shares arising from personal property passing from the said Walter H. Coleman, deceased, to his said next of kin, and that the whole of the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), demanded, claimed and paid, as aforesaid, was duly turned over to the United States, by the said Collector of Internal Revenue in the usual course of his business as collector.

X.

That subsequent to the payment of said Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), as aforesaid, and on or about March 17, 1914, application was
11 duly made to the Commissioner of Internal Revenue, in accordance with the regulations made and provided by the Secretary of the Treasury and in accordance with the provisions of the Act of June 27, 1902, and in said application it was represented that the whole of said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71) was due and should be paid to the Petitioners, in accordance with the provisions of the said Act of June 27, 1902; that on or about, March 24, 1914, the said application was denied; that a request for further consideration having been duly made and filed, the said request for reconsideration was, on or about November 13, 1915, refused and denied, and that the only reason assigned for said denial and refusal to make the payment applied for, as aforesaid, was stated, over the signature of the Acting Commissioner of Internal Revenue, in a letter to the attorneys for the Petitioners, said letter bearing date as of November 13, 1915, and being substantially, in words and figures, as follows:

"Referring to your request filed on the fourteenth ultimo for reconsideration of your rejected claim as attorneys for the estate of Walter H. Coleman, deceased, for the refunding of \$6,721.71, tax on legacies, you are informed that, since no claim for this tax was filed until March 17, 1914, and since no part of the tax was paid upon charitable, educational or religious bequests, the limitation imposed in the Act of July 27, 1912, operates to bar consideration of the claim and it can not, therefore, be reopened."

That the Commissioner of Internal Revenue and the Secretary of the Treasury have refused, and continue to refuse, to pay to the Petitioners the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), and that the whole of said sum is now retained and held by the United States.

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XI.

Petitioners are advised by counsel and therefore aver:

First. That the interests of the next of kin of the said Walter H.

Coleman, deceased, in his said estate, were, on July 1, 1902, within the intendment of the Act of June 27, 1902, contingent beneficial interests which had not become absolutely vested in possession or enjoyment, and that said Act contained an appropriation out of the Treasury of the United States of the funds necessary to pay to the Petitioners the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71) collected and paid as aforesaid.

Second. That the Act of June 27, 1902, and Section 3 thereof, are and continue unrepealed and in full force and effect and that the Act of June 27, 1912, does not, as alleged in the aforesaid letter bearing date as of November 13, 1915, and written over the signature of the said Acting Commissioner of Internal Revenue, place or impose any limitation upon or with respect to the said Act of June 27, 1902, or Section 3 thereof.

XII.

Wherefore your Petitioners aver that there is justly owing to them, on account of the matters herein set forth, the sum of Six Thousand Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), after deducting all just set-offs and demands on the part of the United States, and they further aver that they are the sole owners of the claim herein sued upon, and that no transfer or assignment of said claim or any part thereof or interest therein has ever been made; that Robert L. Coleman one of the Petitioners, is a citizen of the United States and of the State of California and a resident of the City and County of San Francisco in said State and that Louise L. Coleman, one of the Petitioners, is a citizen of the United States and of the State of New York and a resident of the City of White Plains in the County of Westchester in said State, and that they have at all times borne true allegiance to the Government of the United States and have not in any way voluntarily aided, abetted or given encouragement to a rebellion against the United States and that they believe the averments in this petition to be true.

The premises considered, petitioners pray:

Prayer.

1. That this Honorable Court will render judgment against the United States for the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71) in favor of the Petitioners.

2. That Petitioners may have such other and further relief as the nature of the case may require and to this Honorable Court may seem meet and proper.

MORRIS F. FREY,
Attorney for Petitioners.

DISTRICT OF COLUMBIA, ss:

Personally appeared before me, a notary public in and for the District of Columbia, Morris F. Frey, who being duly sworn according to law, deposes and says that he has been duly authorized to make oath in this cause, by power of attorney heretofore filed herein, that he has read and understands the foregoing Petition, and that the matters and facts therein set forth are true in substance and in fact, as he is informed and believes.

MORRIS F. FREY.

Subscribed and sworn to before me this 8th day of March, A. D. 1916.

[SEAL.]

HARRIETT L. HART,
Notary Public.

14 The People of the State of New York to all to whom these Presents shall come or may concern, send Greeting:

Know ye, that we, having inspected the Records of our Surrogate's Court in and for the County of Kings, do find that on the 9th day of June in the year one thousand nine hundred and two, by said court, letters of administration of the goods, chattels, and credits of Walter H. Coleman late of the County of Kings, deceased, were granted and committed unto Louise L. Coleman and Robert L. Coleman and that it does not appear by said records that said letters have been revoked.

In testimony whereof, we have caused the seal of the Surrogate's Court of the County of Kings to be hereunto affixed.

Witness Hon. James C. Church, Surrogate of our said County of Kings, at the County of Kings, the 12th day of January in the year of our Lord one thousand nine hundred and three.

[SEAL.]

WILLIAM P. PICKETT,
Clerk of the Surrogate's Court.

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II. *General Traverse.*

Court of Claims.

No. 33208.

ROBERT L. COLEMAN, as Administrator, and LOUISE L. COLEMAN,
as Administratrix of the Estate of Walter H. Coleman, Deceased,

VS.

THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. *Argument and Submission of Case.*

On January 9, 1918, this case was argued by Mr. Harry T. Newcomb, for the claimants, and by Mr. Charles H. Bradley, for the defendants, and the case was submitted.

IV. *Findings of Fact and Conclusion of Law.*

Filed January 14, 1918.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of Fact.

I.

Claimants are citizens of the United States; Robert L. Coleman, one of the claimants, is a citizen of the State of California and a resident of the City and County of San Francisco in said State, and Louise L. Coleman, one of the claimants, is a citizen of the State of New York and a resident of the City of White Plains in the County of Westchester in said State.

II.

One June 1, 1902, Walter H. Coleman, a citizen of the United States and of the State of New York and a resident of the Borough of Brooklyn in the City of New York and of the County of Kings in said State, departed this life. Said Walter H. Coleman died intestate, leaving him surviving, as his sole next of kin, his daughter Louise L. Coleman, one of the claimants, and his sons
17 Robert L. Coleman and Walter Coleman, said Robert L. Coleman being one of the claimants, all of whom are still living.

By proceedings duly had in the Surrogate's Court of said Kings County, said court having full, complete, and exclusive jurisdiction over the estate of the said decedent, letters of administration upon said estate were thereafter, to wit, on June 9, 1902, duly and lawfully issued to claimants, who duly qualified as administrator and administratrix, and said claimants are still administrator and administratrix of said estate. Upon qualifying as said administrator and administratrix, as aforesaid, claimants came into the actual and exclusive possession of the personal property of said estate and had the same in their possession, except as hereinafter noted, until a date subsequent to July 1, 1902. On June 12, 1902, said administrator and administratrix advanced to each of said next of kin the sum of \$500.00 and on June 25, 1902, they advanced to said Robert L. Coleman the further sum of \$500.00.

III.

Under and by virtue of the laws of the State of New York, in force at the time of the death of said decedent, said Louise L. Coleman, Robert L. Coleman and Walter Coleman, daughter and sons of the said decedent, were each entitled to receive one-third of the net personal estate of said decedent, after the payment of all debts and charges for which the estate of said decedent might be legally liable.

IV.

On July 1, 1902, the debts of the said decedent had not been ascertained or paid, the expenses of administration had not been ascertained, and the time allowed by law for the presentation of claims against said estate had not expired.

V.

On May 29, 1903, the United States Collector of Internal Revenue for the First District of New York, acting on behalf of the United States and assuming to act under the provisions of an Act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet War expenditures and for other purposes" (30 Stat. 448), and amendments thereof, collected from the plaintiffs, as administrator and administratrix, as aforesaid, the sum of \$6,721.71 as a tax under said Act upon the interest of said next of kin in said personal estate. Said sum of \$6,721.71 was paid by claimants to said Collector without protest and was by him paid into the Treasury of the United States in the ordinary course of business.

VI.

On March 17, 1914, the plaintiff, Louise L. Coleman, filed with the Collector of Internal Revenue of the First District of New York the following claim:

"STATE OF NEW YORK,
County of Westchester, ss:

Louise L. Coleman, of the State and County aforesaid, being duly sworn according to law, deposes and says that she is administratrix of the estate of the late Walter H. Coleman, of Kings County, New York; that the said Walter H. Coleman died on the first day of June, A. D. 1902; that on or about the twenty-ninth day of May, A. D. 1903, this deponent paid to the Collector of Internal Revenue for the First District (Brooklyn) of New York, a tax of Six Thousand Seven Hundred Twenty-One and 71/100 Dollars (\$6,721.71) on distributive shares of the said estate; that this deponent verily believes that the said sum of Six Thousand Seven Hundred Twenty-

one and 71/100 Dollars (\$6,721.71) should be refunded for the following reasons:

That the sum herein claimed was erroneously and illegally collected and contrary to the provisions of the War Revenue Act of June 13, 1898, and amendments, and that the said sum should be refunded by virtue of the Act of June 27, 1902 (32 Stat. 406) and the Act of July 27, 1912 (37 Stat. 240).

And this deponent now claims that by reason of the payment of the said — of Six Thousand Seven Hundred Twenty-One and 71/100 Dollars (\$6,721.71), she is justly entitled to have the said sum of Six Thousand Seven Hundred Twenty-One and 71/100 Dollars (\$6,721.71) refunded, and she now asks and demands the same. And this deponent further says that she has not heretofore presented any claim for the above amount or any part thereof.

LOUISE L. COLEMAN.

Sworn to and subscribed before me this 27th day of February, A. D. 1914.

VERVIE P. SUTHERLAND,
*American Consular Agent, Nueva
Gerona, Isle of Pines, Cuba."*

This claim with the endorsement thereon of the date of its receipt, together with the usual affidavit of the Deputy Collector to the effect that the statements therein contained were true, and together
20 with the certificate of the Collector that the statements therein as to the payment of the tax were true and that no claim for refunding thereon had been theretofore presented, and that no portion of the amount claimed had been paid on a compromise or abated as uncollectible or erroneous, was forwarded to the office of the Commissioner of Internal Revenue. The Chief of the Claims Division recommended its rejection March 24, 1914 and on that date it was examined and the rejection approved by the Committee on Claims of the Bureau of Internal Revenue.

On October 15, 1915, Messrs. Newcomb and Frey, as attorneys for the plaintiffs herein, requested in writing of the Commissioner of Internal Revenue that said claim be reopened and allowed. On November 13, 1915 the Acting Commissioner of Internal Revenue notified Messrs. Newcomb and Frey that "Since no claim for the tax was filed until March 17, 1914, and since no part of the tax was paid upon charitable, educational or religious bequests, the limitation imposed in the act of July 27, 1912, operates to bar consideration of the claim and it can not, therefore, be reopened."

Conclusion of Law.

Upon the facts found the court concludes, as a matter of law, that no claim for the refund of the tax in question was filed with the Commissioner of Internal Revenue within the time required by law and that the petition ought to be, and it is, dismissed.

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V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the Fourteenth day of January, A. D., 1918, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that Robert L. Coleman, administrator, and Louise L. Coleman, administratrix of the estate of Walter H. Coleman, deceased, as aforesaid, shall not have and recover any sum in this action of and from the defendants, the United States; and that the petition be and it hereby is dismissed.

By THE COURT.

VI. Claimants' Application for, and Allowance of, Appeal.

Come now the claimants, by their attorney-, and pray an appeal to the Supreme Court of the United States from the judgment entered herein on the fourteenth day of January, nineteen hundred and eighteen, dismissing claimants' petition.

NEWCOMB & FREY,
By H. T. NEWCOMB,
Attorneys for Claimants.

Filed Jan. 23, 1918.

Ordered: That the above appeal be allowed as prayed for.
January 23, 1918.

By THE COURT.

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Court of Claims.

No. 33208.

ROBERT L. COLEMAN, as Administrator, and LOUISE L. COLEMAN,
as Administratrix, of the Estate of Walter H. Coleman, Deceased,

VS.

THE UNITED STATES.

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law, filed by the Court; of the judgment of the Court; of the application of the claimants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this January 24th, A. D. 1918.

[Seal Court of Claims.]

SAML A. PUTMAN,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 26301. Court of Claims. Term No. 834. Robert L. Coleman, as administrator, and Louise L. Coleman, as administratrix, of the estate of Walter H. Coleman, deceased, appellants, vs. The United States. Filed January 28th, 1918. File No. 26301.

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Supreme Court of the United States.

OCTOBER TERM, 1918.

No. 843.

LOUISE L. COLEMAN, as Surviving Administratrix of
the Estate of WALTER H. COLEMAN, Deceased,

v.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

Status.

Appellant sued in the Court of Claims to recover \$6,721.71 which she contends was directed to be refunded to her by the third section of the Act of Congress of June 27, 1902 (*Chap. 1160, 32 Stat. 407*), this sum having originally been exacted from the estate represented by her under color of the legacy tax provisions of the Act of June 13, 1898 (*Chap. 448, 30 Stat. 448, 464-5*). The trial court dismissed the petition (*R. 13*) and made findings of fact (*R. 10-9*) and this appeal was taken (*R. 13*).

Statutes.

The relevant statutes, and portions of statutes, are as follows:

Act of June 27, 1902 (Chap. 1160, 32 Stat. 406-7).

" Chap. 1160. — An Act To provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the Act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes.

" Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, under appropriate rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the corporations, associations, societies, or individuals as trustees or executors, such sums of money as have been paid by them as taxes upon bequests or legacies for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or legacies or bequests to societies for the prevention of cruelty to children, under the provisions of section twenty-nine of the Act entitled 'An Act to provide ways and means to meet war expenditures, and for further purposes,' approved June thirteenth, eighteen hundred and ninety-eight.

" Sec. 2. That the Secretary of the Treasury, under rules and regulations to be prescribed by him, be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, sums paid for documentary stamps used on export bills of lading, such stamps representing taxes which were illegally assessed and collected.

"Sec. 3. That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the Act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two.

"Sec. 4. That taxes which shall have accrued before the taking effect of the Act of April twelfth, nineteen hundred and two, entitled 'An Act to repeal war revenue taxation, and for other purposes,' and since July first, nineteen hundred, upon securities delivered or transferred to secure the future payment of money, are hereby remitted."

Act of July 27, 1912 (Chap. 256, 37 Stat. 240).

"Chap. 256. An Act Extending the time for the repayment of certain war-revenue taxes erroneously collected.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims for the refunding of any internal tax alleged to have

been erroneously or illegally assessed or collected under the provisions of section twenty-nine of the Act of Congress approved June thirteenth, eighteen hundred and ninety-eight, known as the war-revenue tax, or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act may be presented to the Commissioner of Internal Revenue on or before the first day of January, nineteen hundred and fourteen, and not thereafter.

"Sec. 2. That the Secretary of the Treasury is hereby authorized and directed to pay, out of any moneys of the United States not otherwise appropriated, to such claimants as have presented or shall hereafter so present their claims, and shall establish such erroneous or illegal assessment and collection, any sums paid by them or on their account or in their interest to the United States under the provisions of the Act aforesaid."

R. S. 3228.

"All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided*, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date."

Report of Committee.

The report of the Committee on Judiciary of the House of Representatives recommending the enactment of the Act of July 27, 1912 (*House Report No. 848, Sixty-Second Congress, Second Session*) will be referred to herein and is, in full, as follows:

REPAYMENT OF CERTAIN WAR-REVENUE TAXES.

JUNE 6, 1912.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. GILLICUDDY, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 24699.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 24699) extending the time for the filing of claims for the repayment of certain war-revenue taxes erroneously collected, report the same back with the recommendation that it be amended as follows, and that as amended the bill do pass:

Line 6, page 1, strike out the words "July first" and insert in lieu thereof the words "June thirteenth."

Line 3, page 2, strike out the word "the" and insert in lieu thereof the word "such."

Line 4, page 2, strike out the word "of" and insert a comma after the word "collection."

This bill was prepared at the request of and has the approval of the Committee on Claims, before

which private bills are pending, and it also has the approval of the Secretary of the Treasury.

The sole object of this bill is to extend the time to January 1, 1914, for the filing of claims for refund of taxes erroneously assessed or illegally collected under the war-revenue act of June 13, 1898. (See *Knowlton v. Moore*, 178 U. S. Rep., p. 41 *et seq.*).

Congress has passed acts for the refund of certain taxes, such as on foreign bills of lading, manifests, and foreign bills of exchange, as well as passing the act of June 27, 1902, which provided for the refund of certain taxes collected on charitable bequests and certain contingent beneficial interests, but no provision has as yet been made for the refund of taxes illegally collected where the rates were excessive or the tax was illegally exacted, under decisions of the United States courts, such claims being barred under section 3228 of the Revised Statutes, which requires a claim for refund to be made within two years from the date of the payment of the tax.

These cases were practically barred at the time of the adjudication of the questions involved by the courts, and these taxes are practically trust funds in the United States Treasury belonging to the claimants, and a reasonable time ought to be given in which to present these claims, which your committee is of the opinion should be fixed as January 1, 1914.

Congress has repeatedly passed special acts under the same conditions, and there appears to be many bills providing for the refund of such taxes which have passed the Senate at this session, in which favorable reports have been made and which are now pending on the House Calendar, and some of which are yet pending before the House Committee on Claims. Furthermore, the Secretary of the Treasury has several times recommended that the

general legislation be enacted giving these claimants additional time in which to present claims for the refund of taxes erroneously assessed or illegally collected under the act of June 13, 1898, commonly known as the Spanish War revenue-tax act.

The particular taxes sought to be refunded under the authority of this legislation were those collected on legacies and inheritances, in accordance with section 29 of the act above mentioned. The Treasury Department exacted a tax on the full value of the estate, while the Supreme Court of the United States in *Knowlton v. Moore* decided that the tax should have been collected on the distributive interest; and as the law provided that legacies under \$10,000 should be exempt from this taxation, the court further held that where the distributive share was less than \$10,000 no tax thereon was collectible.

Facts.

The findings of fact by the Court of Claims show that:—

1. Appellant's decedent died intestate on June 1, 1902 (*R. 10*).
2. Letters of administration issued on June 9, 1902 (*R. 10*).
3. "On July 1, 1902, the debts of said decedent had not been ascertained or paid, the expenses of administration had not been ascertained, and the time allowed for the presentation of claims against said estate had not expired."—*Finding of fact by the Court of Claims.—R. 11.*
4. All personality of the estate of said decedent was in the possession of appellant, as administra-

trix, and her co-administrator, until subsequent to July 1, 1902, except \$500.00 each (\$1,500.00 in all) advanced to each of three next of kin on June 12, 1902, and \$500.00, additional, advanced to one of them on June 25, 1902 (*R. 10*).

5. On May 29, 1903, the Collector of Internal Revenue exacted from the estate, assuming to act under the legacy tax provisions of the Act of June 13, 1898, the sum of \$6,721.71 which was paid without protest and in the ordinary course of business turned over to defendants (*R. 11*) and has never been refunded (*R. 12*).

6. Application for refund, under the Act of June 27, 1902, was made on March 17, 1914 (*R. 11-2*).

7. Unfavorable action, by the Treasury Department, on the above application was taken on October 15, 1915, the Acting Commissioner of Internal Revenue, saying:—

“Since no claim for the tax was filed until March 17, 1914, and since no part of the tax was paid upon charitable, educational or religious bequests, the limitation imposed in the Act of July 27, 1912, operates to bar consideration of the claim and it can not, therefore, be reopened.”—*R. 12*.

8. Petition was filed in the Court of Claims on March 9, 1916 (*R. 1*) and judgment of dismissal entered (*R. 13*) and this appeal duly taken (*R. 13*).

ARGUMENT.

Outline.

Appellant relies upon the simple proposition that Congress directed the payment to her of the sum sued for, which the Attorney General had declared was a trust fund (*infra*, p. 13), held for her benefit. Appellees claim, in effect, that the trust was repudiated by the Act of July 27, 1912. Appellant says that there was no intent to repudiate, no express repudiation, and that the purpose to avoid an admitted moral obligation cannot be imputed to Congress when to accomplish that result it is necessary to find a repeal by implication of a statute not mentioned in the act alleged to affect the repeal.

It will be argued that:

A. *The sum sued for is within the refunding provisions of the third section of the Act of June 27, 1902.*

B. *The Act of June 27, 1902, contains no limitation as to the time during which application for the refunds which it directs may be made and there is no limitation applicable thereto, at least prior to the Act of July 27, 1912, and,*

C. *The Act of July 27, 1912, did not destroy or modify rights created by the refunding provision of the third section of the Act of June 27, 1902.*

The foregoing will be discussed separately and in order:—

A.

The sum sued for is within the refunding provisions of the third section of the Act of June 27, 1902.

The refunding provision of the third section of the Act of June 27, 1902, is as follows:

“That in all cases where an executor, administrator, or trustee shall have paid, or shall

hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the Act approved June 13, 1898, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July 1, 1902." (*For the entire Act, see supra, 2-3*).

The fourth finding of fact, in this case, by the Court of Claims, is:

"On July 1, 1902, the debts of the said decedent had not been ascertained or paid, the expenses of administration had not been ascertained, and the time allowed for the presentation of claims against said estate had not expired."—*R. 11*.

The result of the foregoing is that the interests in the estate here represented were "contingent," on July 1, 1902, within the intendments of the third section of the Act of June 27, 1902.

United States v. Jones, 236 U. S. 106;

McCoach v. Pratt, 236 U. S. 562.

The foregoing does not appear to be disputed by appellees; in fact it seems to have been admitted by the Treasury Department in basing the rejection of the claim (*R. 12*) on the sole ground that the first act of grace (*Act of June 27, 1902*) was destroyed by the second act of grace (*Act of July 27, 1912*).

B.

The Act of June 27, 1902, contains no limitation as to the time during which application for the refunds which it directs may be made, and there is no limitation applicable thereto, at least prior to the Act of July 27, 1912.

The Act of June 27, 1902, contains no limitation as to the time for claiming the refunds directed by its third section.

It was an act of grace by which Congress created a legal obligation where only a moral obligation would otherwise, at least in many instances, exist. Such acts are within the powers of Congress (*United States v. Realty Company*, 163 U. S. 427).

The principle announced in *United States v. Wardwell*, 172 U. S. 48, appears to apply.

"This is a continuing promise, and one to which full force and efficacy should be given. . . . There is no occasion for suit until after his application for a warrant is refused. When the contract created by the promise . . . is broken, then a claim for the breach of contract first accrues, and the limitation prescribed by section 1069 begins to run." 172 U. S. 48, 52-3.

R. S. 1069, referred to in the foregoing, requires suits to be brought within six years from the accrual of cause of action. There is no suggestion, in this case, that it was not complied with.

R. S. 3228, *supra*, is the only statute of limitations, prior to the Act of July 27, 1912, applicable to the presentation to the Commissioner of Internal

Revenue of claims for the refund of internal revenue taxes. It applies to:—

“ all claims for the refunding of any tax alleged to have been erroneously or illegally collected,
 . . . ”

It is a part of the internal revenue system (*United States v. Hvoslef*, 237 U. S. 1; *Dodge v. Osborne*, 240 U. S. 118) and the period prescribed is two years next after the cause of action accrues.

Section 3228 does not apply to applications for the refunds directed by the third section of the act of June 27, 1902, for, as said by this Court in *United States v. Hvoslef*, 237 U. S. 1; citing *Fidelity Trust Company v. United States*, 45 Ct. Cls. 362, 222 U. S. 158; *United States v. Jones*, 236 U. S. 106; *Thatcher v. United States*, 149 Fed. 902, and *United States v. Shipley*, 197 Fed. 265,—

“ The same rule must obtain ”

as to both the Act of June 27, 1902, and that of July 27, 1912, and—

“ in this view we are not concerned in the present case with questions arising under the general provisions of the internal revenue laws.”—*United States v. Hvoslef*, 237 U. S. 1, 10-1.

Whether R. S. 3228 limited applications for re-refunds under the third section of the Act of June 27, 1902, was before the Attorney General in *The Daly Case*, 26 Op. Atty. Gen. 195. Citing *United States v. Wardwell*, 172 U. S. 48, he said:

“ It cannot be held that claims arising under this Act are barred, because of the failure of the claimants to present them for allowance within two years from the date of payment. The provisions of the Act are special, and apply

to a particular class of obligations against the Government. Being special, these claims are not governed by the provisions of the prior general statute (R. S. 3228)." 26 *Op. Atty. Gen.* 194, 197.

And immediately following the foregoing:—

"Suits brought to recover money due under this act are not 'actions' for the recovery of taxes, but for money held by the Government in trust for the benefit of the parties to whom it rightfully belongs. The Act, by its terms creates and acknowledges the obligation of the Government. A method is prescribed by which each party can secure the money belonging to him whenever he wishes it. No time has been fixed by any rule of the Secretary of the Treasury, which has been called to my attention, within which a claimant must apply for it, or after which the money is forfeited to the Government. It is, therefore, an obligation payable on demand, and the statute of limitations does not begin to run until there has been a refusal to pay, or something equivalent thereto." 26 *Op. Atty. Gen.* 194, 197.

This decision was rendered on March 11, 1907. To the same effect is the decision of the Comptroller of the Treasury (13 *Comp. Dec.* 707) rendered on April 17, 1907. These dates are significant.

In *Thatcher v. United States*, 149 *Fed.* 902, the Circuit Court for the District of Massachusetts said:—

"The answer to the contention of the United States is simple. The petition before the Court is not based upon the illegality of the tax, which it nowhere asserts. It seeks only the free bounty of the Government, given by the Act of 1902, which reads as follows: . . .

"The petitioners could not at any time have maintained suit to recover the tax as having been illegally collected. They had paid it vol-

untarily, not under protest. Their claim to a refund, if they had any, was moral only, and not legal. It appealed only to the Government's sense of fairness and could be satisfied only by the bounty of the United States given upon such terms as Congress saw fit to impose.

The Act of 1902 fixes no time within which the claim for a refund must be filed with the Collector and no departmental regulation has been called to the attention of the Court. . . . *That the tax paid by the petitioners was illegally collected is irrelevant to the issues raised by the petition.*" 149 Fed. 902, 903-4.

So, too, in *United States v. Shipley*, 197 Fed. 265, the Circuit Court of Appeals for the Third Circuit, in an opinion by Judge Gray, said:—

"The refunding act admittedly contains, neither expressly nor by implication, any limitation within which application must be made to the Secretary of the Treasury or any office of the Treasury Department." 197 Fed. 265, 272.

And:—

"It hardly needs argument to support the statement that if the limitation prescribed in section 3228 does not *proprio vigore*, apply to claims made under the special refunding act of June 27, 1902, it is entirely beyond the power of the Secretary of the Treasury or the Commissioner of Internal Revenue to prescribe such a limitation. To hold otherwise would bring us to the absurd conclusion that the Secretary, in the guise of a regulation, could curtail or diminish the right which Congress, by lawful enactment had conferred upon a designated class of persons. If he could by any regulation have adopted the two years period of section 3228, he could likewise have prescribed any longer or shorter period." 197 Fed. 265, 272.

And see:

Rosenfeld v. Scott, 232 Fed. 509.

All the foregoing is understood to be conceded by appellees. It is set forth at length to direct attention to the long and uniform line of authority, existing when the Act of July 27, 1912, was passed, to the effect that *although* sums directed to be refunded by the third section of the Act of June 27, 1902, had been illegally collected (and this was true whether the collection was before or after June 27, 1902; *Vanderbilt v. Eidman*, 196 U. S. 480, 497-500), claims and suits to enforce the right to refund were to obtain a gift or bounty rather than to recover moneys illegally collected.

C.

The Act of July 27, 1912, did not destroy or modify rights created by the refunding provision of the third section of the Act of June 27, 1902.

Appellees rely upon that provision of the Act of July 27, 1912, which provides that "all claims" to which its first section applies may be presented to the Commissioner of Internal Revenue on or before January 1, 1914,—

"and not thereafter."

The letter rejecting appellant's claim (*supra*, 8) implies that, rather oddly, the Treasury Department holds that these words fix a limitation upon the third section of the Act of June 27, 1902, without applying it to the first section of the same Act. That is, it is intimated that if the claim were for refund of a sum exacted in respect of a charitable bequest (*Section 1*), instead of in respect of a contingent interest (*Section 3*), the filing after January 1, 1914, would have made no difference. In other words, the Treasury theory is that the same phrase

in the Act of 1912 has two meanings, one meaning applicable to part of the Act of 1902, an opposite meaning applicable to another part.

The Act of July 27, 1912, contains no direct or express reference to the Act of June 27, 1902, but appellant admits that if her application to the Commissioner (*R. 11-2*), made on March 17, 1914 (*R. 11*), is to be regarded as a—

“claim for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected,”

under Section 29 of the Act of June 13, 1898, and amendments, *within the intendments of the Act of July 27, 1912*, and not an application for a gift or bounty not intended to be affected by the later Act (also an act of grace), it was made too late and the decision below must be affirmed.

The question is wholly one of Congressional intent—*Rodgers v. United States*, 185 U. S. 83, 86.

The title of the Act of July 27, 1912, indicates no purpose to withdraw any bounty or to impair, alter or destroy anything granted by any previous enactment. This title, in full, is:—

“An act extending the time for the repayment of certain war-revenue taxes erroneously collected.”

So if this act operated as appellees contend, its title was misleading. There was not, in the title, even the familiar “and for other purposes,” to cover an intent different from that in terms proclaimed.

The Act of July 27, 1912, was passed five years after the Attorney General and the Comptroller of the Treasury had held (*supra*, 13) that the benefits

of the third section of the act of June 27, 1902, were not limited by R. S. 3228. And *R. S. 3228 was the only statute which stood in any degree in the way of the presentation and payment of any claims affected by the Act of July 27, 1912*. The inference seems irresistible that the *sole purpose* of the Act of 1912 was to afford relief from the requirements of R. S. 3228.

This inference is strengthened by a comparison of the general statute of limitations (*R. S. 3228*) and the relieving Act (*of July 27, 1912*). *Both acts use identical words in stating the general subject-matter to which they apply*. Both of them begin:—

“All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected.”

The foregoing words, common to both statutes, are followed in R. S. 3228 by the words necessary to include penalties and in the Act of 1912 by those necessary to restrict their application to sums collected under color of Section 29 of the Act of June 13, 1898. After these distinguishing words both R. S. 3228 and the Act of 1912, continue as follows:—

“Or of any sums¹ alleged to have been excessive, or in any manner wrongfully collected.”

After the foregoing, the Act of 1912, says, “under the provisions of said Act may” and R. S. 3228 says, “must”. Then both acts say:

“presented to the Commissioner of Internal Revenue.”

Then follows the limitation. In R. S. 3228 it is,

“within two years next after the cause of action accrued.”

¹ “Sums,” in the Act of 1912; “sum,” in R. S. 3228.

In the Act of July 27, 1912, it is:—

“on or before the first day of January, 1914, and not thereafter.”

Appellant is unable to perceive how it could be held that her application of March 17, 1914 (*R. 11-12*), was referred to by the words of the Act of July 27, 1912, when *it was not within the effect of the same words in R. S. 3228*. It has been shown that it had repeatedly been held that R. S. 3228 did not apply to such an application (*supra*, 11-15). Congress knew of these decisions and must be presumed to have formulated the Act of 1912 in the light of this knowledge. From the beginning all courts to which the question had been presented, as well as the Attorney General and the Comptroller, had held that claims under the third section of the Act of June 27, 1902, are *not claims for taxes illegally collected* but FOR A GIFT OR BOUNTY PROVIDED BY CONGRESS. Whether the collection was illegal or otherwise, or that it was actually illegal, has nothing to do with such a claim.

The report of the Committee on Judiciary of the House of Representatives (*supra*, 5-7) recommending the enactment of July 27, 1912, is printed in full herein. This report may be referred to if necessary in order to determine the legislative intent:

Buttfield v. Stranahan, 192 U. S. 470, 495.
The Delaware, 161 U. S. 459, 472;
Danciger v. Cooley, 248 U. S. 319, 325.

This report (*House Report No. 848, Sixty-second Congress, Second Session*), affords support to the view that Congress was concerning itself with the removal of the limitations fixed by R. S. 3228, where it applied, and had no thought of taking away any-

thing accorded by the Act of June 27, 1902. It distinguishes (a) the subject-matter of the new Act from (b) the subject-matter of the Act of June 27, 1902, saying that *the latter had been provided for* and that *the former should be*. The following is quoted:—

"Congress has passed acts for the refund of of certain taxes, such as . . .

"The Act of June 27, 1902, which provides for the refund of certain taxes collected on charitable bequests and certain contingent beneficial interests.

"But no provision has as yet been made for the refund of taxes illegally collected where the rates were excessive or the tax was illegally exacted, under decisions of the United States courts, such claims being barred under section 3228 of the Revised Statutes, which requires a claim for refund to be made within two years from the date of the payment of the tax.

"These cases were practically barred at the time of the adjudication of the questions involved by the courts, and these taxes are practically *trust funds in the United States treasury* belonging to the claimants and a reasonable time ought to be given in which to present these claims, which your Committee is of the opinion should be fixed as January 1, 1914." *Report of Committee on Judiciary, House Report No. 848, Sixty-second Congress, Second Session.*¹

Moreover, the chairman of the sub-Committee of the Committee on Judiciary, in charge of the measure on the floor of the House of Representatives, explaining its purpose and effect (*Congressional Record, Sixty-second Congress, Second Session, pp. 8309-8310*), declared that the purpose was to relieve those whose claims were barred by R. S. 3228. This statement is competent to show the purpose of Congress (*United States v. St. Paul, Minneapolis*

¹This extract is paragraphed here for convenience in reading.

& *Manitoba Railway*, 247 U. S. 310, 318). R. S. 3228, as has been shown (*supra*, 11-15), had no effect upon appellant's application—the denial of which led to this suit.

It would thus seem clear, from the language of the Act of July 27, 1912, and from extraneous facts to which reference is properly made, that *the purpose of Congress was to provide for claims not covered by the Act of June 27, 1902, and to extend the time for filing claims otherwise barred* or, at least, soon to be barred by R. S. 3228. All this is quite at variance with the notion that the Act of 1912 was intended in any way to modify or affect the Act of 1902.

If Congress had intended to repeal or modify the Act of June 27, 1902, when enacting that of July 27, 1912, it would have explicitly declared that purpose. It was under no necessity to disguise or furtively to pursue any intention in the premises which it entertained (*Cochmower v. United States*, 248 U. S. 405). Although the Act of July 27, 1912, contains no reference to the Act of June 27, 1902, the contention of appellees is, in effect, that the later Act repeals the refunding provision of the earlier Act. The word "repeal" is used advisedly, for if the limitation of the Act of 1912 became a part of the Act of 1902, the Act of 1902 ceased to be effective on January 1, 1914. If appellees are right, the Act of June 27, 1902, has wholly ceased to speak. *Either that Act continues to proclaim that whoever has paid or shall pay in respect of a contingent interest may recover, upon proper demand, or it does not speak at all.* The view that it was "limited," so that after January 1, 1914, such demands could not be made cannot be diminished to a claim of mere modification or amendment. An amended statute continues to speak with some, although modified, effect. On appellee's

theory, the refunding provision of the Act of June 27, 1902, no longer has any effect at all. But if this result is to be found in the Act of 1912, it must be there by implication only, and by an implication so attenuated that no word or series of words can be pointed to as specifically or clearly indicating the Act thus affected. It would be strange indeed should one act of grace imply a subtraction from another act of grace to which it nowhere refers.

The contention that the limit of the Act of 1912 applies to the Act of 1902 is considered, therefore, to do violence to the rule that *repeals by implication are not favored* (*Allen v. United States*, 204 U. S. 581; *Washington v. Miller*, 235 U. S. 422). The Acts of 1902 and 1912, are not inconsistent, they can be construed so as to give effect to both. The rule is believed to require such construction where practicable.

"It is well settled that repeals by implication are not favored. And where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed—is, if possible, to give effect to both." *Frost v. Wenie*, 157 U. S. 46.

"That it has not been expressly or by direct terms repealed is admitted; and the question resolves itself into the more narrow inquiry, whether it has been repealed by necessary implication. We say by necessary implication, for it is not sufficient to establish that subsequent laws cover some or even all of the cases provided for by it; for they may be merely affirmative, or cumulative, or auxiliary. But there must be a positive repugnancy between the provisions of the new law, and those of the old, and even then the old law is repealed by implication only *pro tanto*, to the extent of the repugnancy. *Wood v. United States*, 16 Pet. 343, 362-3.

" . . . statutes which apparently conflict with each other are to be reconciled, as far as may be on any fair hypothesis, and validity given to each, if it can be, and is necessary to conform to usages under them, or to preserve the titles of property undisturbed." *Beale v. Hale*, 4 How. 37, 51.

"Repeal by implication is not favored in the law. It is held to occur only where different statutes cover the same ground and *there is a clear and irreconcilable conflict* between the earlier and the later. The rule, as thus stated, is so well settled that discussion and the citation of authorities are unnecessary." *Board of Supervisors of Wood County v. Lackawanna Iron and Coal Company* 93 U. S. 619, 624.

See, also:

United States v. Claflin, 97 U. S. 546, 541-2;

McCool v. Smith, 1 Black, 459;

United States v. Tynen, 11 Wall. 88, 93;

Red Rock v. Henry, 106 U. S. 596, 601;

Henderson's Tobacco, 11 Wall. 652;

King v. Cornell, 106 U. S. 395, 396.

It is submitted that between the Acts of June 27, 1902, and July 27, 1912, there is no repugnancy; that *to reconcile and give effect to each it is necessary only to give to both the interpretation and effect naturally suggested by the words themselves*—as to the Act of June 27, 1902, to apply a judicial interpretation long established.

The case of the Government would be no stronger if its contention could be reduced to the scope of mere insistence that the Act of June 27, 1902, was modified or amended by that of July 27, 1912.

"The rule of statutory construction is well settled that a general act is not to be construed

as applying to cases covered by a prior special statute on the same subject. On this principle we held in *Townsend v. Little*, 109 U. S. 504, that special and general statutory provisions may subsist together, the former qualifying the latter. See, also, *Churchill v. Crease*, 5 Bing. 177; *Magone v. King*, 2 C. C. A. 383, 1 U. S. App. 267, 51 Fed. 525, and cases cited; *State v. Clarke*, 25 N. J. L. 54." *United States v. Nix*, 189 U. S. 199.

See, also, the elaborate review of cases by the late Mr. Justice Brewer, delivering the opinion of this Court in *Rodgers v. United States*, 185 U. S. 83. In that opinion the following is quoted, with approval:

" . . . the legislature . . . does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do."—*Fitzgerald v. Champenys*, 30 L. J. Ch. N. S. 782, 2 Johns. & H. 31-54—Quoted, 185 U. S. 83.

And, summarizing the cases, Mr. Justice Brewer said:—

" It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general,—the terms of the general broad enough to include the matter provided for in the special,—the fact that the one is special and the other general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special." 185 U. S. 83, 87-8.

And see:

Ex parte United States, 226 U. S. 420, 424.

Congress had been told by the Attorney General (*supra*, 13) that the money directed to be paid to this appellant was a trust fund; to retain this money in the Treasury it is necessary to conclude that Congress repudiated the trust and adopted the Act of July 27, 1912, with such repudiation in view. No such purpose is expressed in the act, or necessarily or even remotely implied, and the competent declarations of the Committee on Judiciary (which reported the measure) and the chairman of its subcommittee (who had charge of it while it was under discussion) are inconsistent with such an intention.

Conclusion.

The judgment below should be reversed.

All of which is respectfully submitted.

H. T. NEWCOMB,
Attorney for Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ROBERT L. COLEMAN, AS ADMINISTRATOR, and Louise L. Coleman, as Adminis- tratrix, of the Estate of Walter H. Cole- man, Deceased, Appellants, v. THE UNITED STATES.	}	No. 348.
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APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

On March 9, 1916, appellants, as administrators of the estate of Walter H. Coleman, filed in the Court of Claims their petition seeking to recover from the United States the sum of \$6,721.71, paid on May 29, 1903, as a tax on the interest of the next of kin of the deceased in his personal estate (R. 1-8).

The general traverse was entered thereto (R. 9).

The findings of fact (R. 10-12) showed that Walter H. Coleman died in Brooklyn, New York, on June 1, 1902, intestate, leaving three children as his heirs

and next of kin, each entitled to receive one-third of said personal estate after payment of debts and charges. Appellants qualified as his administrators on June 9, 1902. On June 12, 1902, they advanced \$500 to each of said next of kin, and on June 25, 1902, the further sum of \$500 to one of them.

On July 1, 1902, the debts of decedent and the expenses of administration were unascertained and unpaid.

On May 29, 1903, the United States Internal Revenue Collector for the First District of New York collected from appellants as the tax due on the interest of said next of kin in said estate said sum of \$6,721.71. It was demanded under section 29 of the Act of Congress approved June 13, 1898, ch. 448, 30 Stat. 448, entitled "An Act to provide ways and means to meet war expenditures and for other purposes," and amendments thereto. The tax was paid voluntarily without protest, and was by the collector covered into the treasury of the United States in the ordinary course of business.

On March 17, 1914, the appellant, Louise L. Coleman filed a claim for said sum of said tax as erroneously and illegally paid and collected under the provisions of said War Revenue Act and amendments and as due to be refunded under section 3 of the Act of June 27, 1902, c. 1160, 32 Stat. 406, and the Act of July 27, 1912, c. 353, 37 Stat. 240.

The claim was rejected on the ground that not having been presented by January 1, 1914, it was

barred of consideration by the said Act of July 27, 1912.

The Court of Claims found as a conclusion of law that no claim for the refund of said tax was filed with the Commissioner of Internal Revenue within the time required by law and that the petition must therefore be, and it is, dismissed (R. 12).

From the decree so adjudging, this appeal is prosecuted.

ARGUMENT.

I.

The claim is barred by the Act of July 27, 1912, because not presented to the Commissioner of Internal Revenue on or before January 1, 1914.

Recovery in the present suit is sought under section 3 of the Act of Congress of June 27, 1902, ch. 1160, 32 Stat. 406, called the Refunding Act, which provides, in substance, (a) for the refund upon proper application of all taxes theretofore or thereafter collected under the Act of June 13, 1898, upon contingent beneficial interests which should not become vested prior to July 1, 1902, and (b) that no tax should thereafter be collected under said act upon any contingent beneficial interest which should not become absolutely vested in possession and enjoyment prior to that date (R. 7, 8).

Claims for refunds under this provision have been held to be in the nature of claims for a bounty specially set aside by the Government. The provision contains no limitation on the time in which claims thereunder may be presented; and in view of

the special nature of such claims, it is held that they are not subject to the two-year limitation imposed by section 3228 of the Revised Statutes upon claims for the refund of taxes generally. *Fidelity Trust Co. v. United States*, 45 Ct. Cls. 362; *Thatcher v. United States*, 149 Fed. 902; *United States v. Shipley*, 197 Fed. 265; *The Daley Case*, 26 Ops. Atty. Gen. 194.

Accordingly, for a period of ten years claims arising under this provision were not affected by any limitation save the general six-year limitation on the jurisdiction of the Court of Claims and the Circuit and District Courts imposed by section 1069 of the Revised Statutes and section 1 of the Tucker Act (see Judicial Code, sections 24 (par. 20) and 156), while during the same period other claims also growing out of section 29 of the War Revenue Act were subject to the two-year limitation contained in section 3228 of the Revised Statutes.

In order to place all claims growing out of the War Revenue Act on an equal footing, Congress passed the Act of July 27, 1912 (ch. 356, 37 Stat. 240), extending the time for the filing of such claims for refunds growing out of section 29 of the War Revenue Act as had become barred by the several statutes of limitation, and providing that *all* claims for the refund of taxes alleged to have been erroneously or illegally collected under said War Revenue Act might be presented to the Commissioner of Internal Revenue on or before January 1, 1914, and *not thereafter*.

The language of the act is plain and unmistakable and leaves no room for doubt that it was the purpose of Congress to place a definite limitation on all claims growing out of the Act of 1898:

* * * *all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under [section 29 of the War Revenue Act], or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said act may be presented to the Commissioner of Internal Revenue on or before [January 1, 1914], and not thereafter.* [Italics ours.]

This sum of \$6,721.71 if wrongfully collected was erroneously collected as taxes on May 29, 1903, in violation of the provisions of the act of June 27, 1902, and such is the allegation of the claim filed with the Commissioner of Internal Revenue. (R. 11-12.)

In this case it is conceded that the payment was made voluntarily in 1903. No steps had been taken to collect the sum paid when the act of 1912 was passed. No attention was called to the claim until March 17, 1914, when the claimant, Louise L. Coleman filed her claim with the Commissioner of Internal Revenue. This was nearly two years after this act of 1912 was passed and over two months after the time fixed by said act for filing such claims.

The conclusion is inevitable that the same was then too late and the claim could not lawfully be paid by the Secretary of the Treasury.

II.

The language of the Act of July 27, 1912, is plain and unambiguous and can not be divested of its obvious meaning by resort to construction.

Appellants point to the report of the Committee on the Judiciary of the House of Representatives recommending the passage of the act which states that the purpose of the act is to extend until January 1, 1914, the time in which to file certain classes of claims already barred by the statute of limitations, and from said report and the title of the act they argue that this was the only purpose which Congress had in mind and that Congress did not intend to place a limitation on other claims, such as theirs, which at the time of the passage of the act were not barred by any limitation.

Conceding, *arguendo*, that it was the purpose, even the immediate purpose, of the act to extend until January 1, 1914, the time in which to file *certain* claims, it by no means follows that this was the only purpose which Congress had in mind. The existence of this particular intent is in no wise inconsistent with the existence of a further intent, as disclosed by the wording of the act, to place a final limitation on *all* claims growing out of the War Revenue Act, and thereby end the unjust discrimination between different classes of claims in the matter of limitation.

The conclusive answer to the contention is that the language of the Act is plain and unambiguous and can not be divested of its obvious meaning by

resort to construction. *Hamilton v. Rathbone*, 175 U. S. 414, 421; *United States v. Lexington Mill & c Co.*, 232 U. S. 399, 409-10; *Adams Express Co. v. Kentucky*, 238 U. S. 190, 199; *Caminetti v. United States*, 242 U. S. 470, 485; *Thompson v. United States*, 246 U. S. 547, 551.

In *Thompson v. United States*, *supra*, this elementary rule is stated as follows:

The intention of Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture.

And in *Caminetti v. United States*, *supra*, the court thus stated the rule:

It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms. * * *

Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

III.

This court has plainly decided that the Act of July 27, 1912, should be given a literal interpretation.

In the case of *Hvoslef v. United States*, 237 U. S. 1, this court plainly decided that the language of the Act of July 27, 1912, should receive a literal interpretation. That case involved a claim filed under the Act of 1912 for the refund of certain stamp taxes collected on charter parties under section 25 of the War Revenue Act. The Government contended that the purpose of Congress, as disclosed by the report of the House Committee on the Judiciary, was merely to extend the time for filing claims growing out of section 29 of the War Revenue Act, and not as to claims growing out of other sections of said act. The court rejected the contention, saying:

It is urged by the Government that Congress intended to limit the Act of 1912 to the refunding of death duties erroneously or illegally assessed under Section 29 of the War Revenue Act. Reference is made to the legislative history of the statute, but the contention lacks adequate support. (See House Reports, 62d Cong. 2d Sess., Report No. 848, June 6, 1912.) While the pendency of claims for the refunding of such taxes may have induced the passage of the Act its terms were not confined to these. On the contrary, after providing for the claims arising under Section 29, Congress added the further clause making express provision for the presentation of claims for the refunding "of any sums

alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act"; * * * We are not at liberty to read these explicit clauses out of the statute. (P. 11.)

IV.

The Act of July 27, 1912, has been given a literal interpretation by the administrative officers charged with its execution.

As shown by the letter from the Acting Secretary of the Treasury dated September 26, 1917, printed as an appendix hereto, the Act of July 27, 1912, has been given a literal interpretation by the administrative officers charged with its execution. This interpretation has been contemporaneous, long continued, and uniform, and is entitled to great weight. *United States v. Moore*, 95 U. S. 760, 763; *United States v. Philbrick*, 120 U. S. 52, 59; *United States v. Finnell*, 185 U. S. 236, 244; *Louisiana v. Jack*, 244 U. S. 397, 406.

CONCLUSION.

The judgment of the Court of Claims should be affirmed.

ALEX. C. KING,
Solicitor General.

APRIL, 1919.

APPENDIX.

TREASURY DEPARTMENT,
Washington, September 26, 1917.

The honorable the ATTORNEY GENERAL,
Washington, D. C.

SIR: In response to your personal inquiry with regard to the interpretation given the act of July 27, 1912, by this department, I beg to say that the final day named in that act for the filing of claims for illegally collected legacy taxes has been held uniformly to be the final day upon which original claims may be presented for the refunding of taxes paid upon contingent beneficial interests not vested in possession or enjoyment prior to July 1, 1902. Accordingly, every original claim filed after January 1, 1914, for the refunding of tax collected upon such contingent interests has been rejected. No exception has been made to this rule.

Respectfully,

B. R. NEWTON, *Acting Secretary.*

(11)

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**COLEMAN, SURVIVING ADMINISTRATRIX OF
COLEMAN, v. UNITED STATES.**

APPEAL FROM THE COURT OF CLAIMS.

No. 343. Argued April 29, 1919.—Decided May 19, 1919.

A tax demanded and paid under § 29 of the War Revenue Act of June 13, 1898, c. 448, 30 Stat. 448, on a contingent beneficial interest not vested prior to July 1, 1902, contrary to the Refunding Act of June 27, 1902, c. 1160, § 3, 32 Stat. 406, is a tax "erroneously

30.

Opinion of the Court.

collected" within the meaning of the Act of July 27, 1912, c. 256, 37 Stat. 240, although the payment was without protest or reservation, and under that act the right to a refund is barred if the claim was not presented to the Commissioner of Internal Revenue on or before January 1, 1914.

53 Ct. Clms. 628, affirmed.

THE case is stated in the opinion.

Mr. H. T. Newcomb for appellant.

The Solicitor General for the United States.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit to recover \$6,721.71 paid for a tax upon the distributive shares of the children of Walter H. Coleman in his personal property. The tax was demanded and paid under the Act of June 13, 1898, c. 448, § 29, 30 Stat. 448, 464, 465. The later Act of June 27, 1902, c. 1160, § 3, 32 Stat. 406, directed the refunding of so much of such taxes "as may have been collected on contingent beneficial interests which shall not have been vested prior to July first," 1902, and forbade a tax to be imposed upon such an interest. On July 1, 1902, Coleman was dead but his debts had not been paid, the year allowed for the proof of claims against his estate had not expired, and the expenses of administration had not been ascertained. Therefore, it is said, the interest of his children still was contingent. *United States v. Jones*, 236 U. S. 106. *McCoach v. Pratt*, 236 U. S. 562. The tax was collected on May 29, 1903. On March 17, 1914, the claimants applied to the Collector of Internal Revenue and through him to the Commissioner of Internal Revenue to refund it. The application was rejected and on March 9, 1916, the claimant began this suit. The Court of Claims held that it was barred by the Act of July 27, 1912, c. 256, 37 Stat. 240.

That statute provides that "all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected" under the above mentioned § 29 of the Act of June 13, 1898, "or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act may be presented to the Commissioner of Internal Revenue on or before the first day of January, nineteen hundred and fourteen, and not thereafter." By § 2 payment of claims so presented is directed. The act is entitled "An Act Extending the time for the repayment of certain war-revenue taxes erroneously collected," and the claimant contends that the present claim is not of that sort, that this tax having been paid without protest or any reservation of rights, the claim is only for a bounty conferred by the Act of 1902 and that the benevolence of that act never has been withdrawn. But, bounty or not, the direction in the Act of 1902 was on the footing that the sums ordered to be repaid were collected erroneously, *Vanderbilt v. Eidman*, 196 U. S. 480, and was an order for the refunding of a tax alleged to have been erroneously collected. The present tax had not been collected when the Act of June 27, 1902, was passed, but was collected afterwards contrary to its terms. There was little bounty in its application to such a case. No argument can make it plainer than do the words themselves that the Act of 1912 applies to the present claim, and that it was presented too late.

Judgment affirmed.